



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2023-0202; FRL-10873-03-R9]

#### Determination to Defer Sanctions; California; Mojave Desert Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim final determination.

**SUMMARY:** The Environmental Protection Agency (EPA) is making an interim final determination that the California Air Resources Board (CARB) has submitted a rule and other materials on behalf of the Mojave Desert Air Quality Management District (MDAQMD or “District”) that correct deficiencies in its Clean Air Act (CAA or “Act”) state implementation plan (SIP) provisions concerning reasonably available control technology (RACT) ozone nonattainment requirements for controlling emissions of oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOCs) from internal combustion engines. This determination is based on a proposed approval, published elsewhere in this issue of the *Federal Register*, of MDAQMD’s Rule 1160 which regulates this source category. The effect of this interim final determination is that the imposition of sanctions that were triggered by a previous limited disapproval by the EPA in 2021 is now deferred. If the EPA finalizes its approval of MDAQMD’s submission, relief from these sanctions will become permanent.

**DATES:** This interim final determination is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. However, comments will be accepted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2023-0202 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed

from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 942-3245 or by email at [evanshopper.lakenya@epa.gov](mailto:evanshopper.lakenya@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

## **Table of Contents**

- I. Background
- II. The EPA’s Evaluation and Action
- III. Statutory and Executive Order Reviews

### **I. Background**

On September 10, 2021 (86 FR 50643) (“2021 final rule”), the EPA issued a final rule promulgating a limited approval and limited disapproval for the MDAQMD rule listed in Table 1 that was submitted by CARB to the EPA for inclusion into the California SIP.

Table 1—District Rule With Previous EPA Action

| <b>Rule No.</b> | <b>Rule title</b>           | <b>Amended</b> | <b>Submitted</b> | <b>EPA action in 2021</b>                |
|-----------------|-----------------------------|----------------|------------------|--|
| 1160            | Internal Combustion Engines | 01/22/2018     | 05/23/2018       | Limited Approval and Limited Disapproval |

Areas classified as Moderate or above nonattainment for an ozone standard must implement RACT for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs and NO<sub>x</sub> (see CAA section 182(b)(2), (f)). The MDAQMD contains parts of the Western Mojave Desert ozone nonattainment areas, which is classified as Severe-15 nonattainment for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the 2008 8-hour ozone NAAQS (see 40 CFR 81.305).

In the 2021 final rule, we determined that although the MDAQMD rule strengthened the SIP and was largely consistent with the requirements of the CAA, the submitted rule included three deficiencies that precluded our full approval of the rule into the SIP. MDAQMD's previously submitted Rule 1160 allowed for engines to comply with an alternative emission reduction provision instead of the concentration-based emission limits for NO<sub>x</sub>. The EPA found that this provision was not sufficiently clear to constitute an enforceable emission limitation, control measure, means or technique, as required under section 110(a)(2) of the Act, contained unapprovable director's discretion, and had not been sufficiently justified as meeting RACT stringency levels. Second, under the alternative emission reduction option, the rule allowed units operating at the same facility to aggregate their emissions in order to comply with a percentage reduction. The rule provisions did not meet the criteria for economic incentive program (EIP) integrity because they failed to require that any excess emission reductions credited through the provision be surplus (i.e., not required by any other federally enforceable provision).<sup>1</sup> This omission could allow reductions that are otherwise federally required to be aggregated and therefore allow greater emissions at other units.

<sup>1</sup> See "Improving Air Quality with Economic Incentive Programs" (EPA-452/R-01-001, January 2001).

Finally, the compliance determination requirements under the rule did not require adequate source testing for emission units without emission control equipment.

Pursuant to section 179 of the CAA and our regulations at 40 CFR part 52, the disapproval action on Rule 1160 under title I, part D started a sanctions clock for imposition of offset sanctions 18 months after the action's effective date of October 12, 2021, and highway sanctions 6 months later.

On January 23, 2023, the MDAQMD revised Rule 1160, and on March 3, 2023, CARB submitted it to the EPA for approval into the California SIP as shown in Table 2 below.

**Table 2—Submitted Rule**

| <b>Rule No.</b> | <b>Rule title</b>           | <b>Revised</b> | <b>Submitted</b> |
|-----------------|-----------------------------|----------------|------------------|
| 1160            | Internal Combustion Engines | 01/23/2023     | 03/03/2023       |

On March 17, 2023, the Submittal for MDAQMD Rule 1160 was determined to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

The revised MDAQMD Rule 1160 in Table 2 is intended to address the disapproval issues in our 2021 final rule. In the Proposed Rules section of this issue of the Federal Register, we have proposed approval of the revised MDAQMD Rule 1160. Based on this proposed action approving Rule 1160 into the California SIP, we are also making this interim final determination, effective on publication, to defer imposition of the offset sanctions and highway sanctions that were triggered by our 2021 final rule on Rule 1160, because we believe that the submittal corrects the deficiencies that triggered such sanctions.

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this interim final determination and the proposed approval of MDAQMD Rule 1160, we would take final action to lift this deferral of sanctions under 40 CFR 52.31. If no comments are submitted that change our assessment, then all sanctions and any sanction clocks triggered by our 2021 final rule would be permanently terminated on the effective date of our final approval of Rule 1160.

## **II. The EPA's Evaluation and Action**

We are making an interim final determination to defer CAA section 179 sanctions associated with our limited disapproval action on September 10, 2021, of MDAQMD's Rule 1160 with respect to the requirements of part D of title I of the CAA. This determination is based on our concurrent proposal to fully approve MDAQMD Rule 1160 which resolves the deficiencies that triggered sanctions under section 179 of the CAA.

Because the EPA has preliminarily determined that MDAQMD Rule 1160, amended on January 23, 2023, addresses the limited disapproval issues under part D of title I of the CAA identified in our 2021 final rule and the amended rule is now fully approvable, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, the EPA is providing the public with a chance to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has submitted a revision to the SIP that corrects deficiencies under part D of the Act that were the basis for the action that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while the EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this action is to relieve a restriction (5 U.S.C. 553(d)(1)).

## **III. Statutory and Executive Order Reviews**

This action defers sanctions and imposes no additional requirements. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the action does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the EPA Administrator of this final action does not affect the finality of this action for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such action.

This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: **March 30, 2023.**

Kerry Drake  
*Acting Regional Administrator,*  
*Region IX.*

[FR Doc. 2023-07082 Filed: 4/6/2023 8:45 am; Publication Date: 4/7/2023]